

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL BAIL APPLICATION NO. 1698 OF 2019

Santosh Anna Dhavale

...Applicant

Versus

The State of Maharashtra

...Respondent

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Mr. Idris M. Vohra a/w Mahesh B. Pahane, Advocate for the Applicant.

Smt. Veera Shinde, APP for the State-Respondent.

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CORAM : PRAKASH D. NAIK, J.

DATE : 27th January, 2020

PC :

1. The applicant is arrested on 2nd March, 2019 in connection with C.R. No. 127 of 2019 registered with Daund Police Station, Dist. Pune, for offences punishable under Sections 8, 15, 18, 32 and 46 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for Short "N.D.PS" Act).

2. The prosecution case is that, According to the complainant – PSI Bhanudas Jadhav, on 2nd March, 2019, the Deputy Superintendent of Police of Daund Division received information that person named Santosh Dhavale having land at Village Malthan, is cultivating cannabis plant in his land. After completing the necessary formalities, raid was conducted. It is alleged that when they reached

the said spot, they found one person standing in the Grannery Crops and another person standing in Onion Crops. The person standing at Grannery crop gave his name as Santosh Dhavale (Applicant). The person standing at onion crop disclosed his name as Vikas Dhavale. The applicant was found to be working in the field owned by his wife and the co-accused was found, in the field owned by his father. As far as the applicant is concerned, it is stated that he was found in the field where the opium poppy were planted amongst grannery. The weight of Opium Poppy trees found in the field of applicant was 313 Kg. And the opium Poppy trees found in field of co-accused was 67 Kg. Under the N.D.P.S Act ,small quantity and commercial quantity with respect to cultivating of opium/poppy has not been specified separately and the offences in this regard are covered under Section 18(c) of the N.D.P.S. Act. Under Section 18(c), punishment for contravention in relation to opium poppy and opium, is rigorous imprisonment which may extend to ten years and with fine which may extend to one lakh rupees. It is not in dispute that the said opium/poppy which was found was amongst other crops that were planted. Whether or not the Applicant had knowledge or not with regard to the same, is a matter which will be decided by the trial Court. Learned APP on instructions submit that the CA report indicates that the plants found in the field were opium poppy. The

applicant has no antecedents. Investigation is complete and charge-sheet is filed. The accused Vikas Dhavale who was standing in onion crops has been granted bail by this Court vide order dated 24th September, 2019. The Note (3) below the notification dated 19th October, 2001 vide clause (vii a) and (xxiii a) of Section 2 of N.D.P.S. Act, which prescribes Table relating to small quantity/commercial quantity of Narcotic Drug and Psychotropic Substances reads as follows :

(3) “Small Quantity” and “Commercial Quantity” with respect to cultivation of opium Poppy is not specified separately as the offence in this regard is covered under clause (c) of Section 18 of Narcotic Drug and Psychotropic Substances Act, 1985.”

3. Considering the aforesaid circumstances, application is allowed and the applicant is enlarged on bail on the following terms and conditions:-

ORDER

- i) Bail Application No. 1698 of 2020 is allowed;
- ii) The applicant is directed to be released on bail in connection with C.R. No. 127 of 2019 registered with Daund Police Station, Dist. Pune on

furnishing P.R. bond in the sum of Rs. 25,000/-
with one or more sureties in the like amount;

- iii) The applicant shall report concerned police station once in a month on every first Saturday between 10.00 a.m. to 11.00 a.m. till further order.
- iv) The Applicant shall not tamper with the evidence or attempt to influence/contact the complainant, witnesses or any person concerned with the case;
- v) The Applicant shall co-operate in the conduct of the trial and shall attend the trial Court on every date of hearing, unless exempted by the trial Court;
- vi) It is made clear, that the observations made herein are prima facie, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.
- vii) The Application stands disposed of accordingly.

(PRAKASH D. NAIK, J.)